

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Advanced Television Systems )  
and Their Impact Upon the )  
Existing Television Broadcast )  
Service )

MM Docket No. 87-268

To: The Commission

**REPLY TO OPPOSITIONS TO PETITIONS  
FOR RECONSIDERATION**

WCPX License Partnership ("WCPX"), by its counsel and pursuant to Section 1.429(g) of the Commission's Rules, hereby replies to the oppositions to petitions for reconsideration of the Fifth Report and Order (FCC 97-116, released April 21, 1997), and Sixth Report and Order (FCC 97-115, released April 21, 1997) filed by Reece Associates Limited ("Reece") on July 18, 1997, and by National Public Radio ("NPR") on June 9 and July 18, 1997. In support hereof, WCPX states as follows:

**I. INTRODUCTION**

WCPX is the licensee of Television Station WCPX, NTSC Channel 6, Orlando, Florida ("WCPX-TV"). On June 13, 1997, WCPX filed a "Petition for Partial Reconsideration of the Sixth Report and Order." WCPX requested that the Commission use the low band VHF channels (2-6) for DTV, pointing out that the available engineering data provides no support for the continuing uncertainty about including Channels 2-6 in the core DTV spectrum. WCPX also

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requested the Commission to clarify that WCPX-TV will be able to switch back to its NTSC Channel 6 assignment to provide DTV service at the end of the transition period. Only if the Commission determined not to include Channels 2-6 in the core spectrum and allow WCPX-TV to switch its DTV operation back to Channel 6, WCPX requested that the Commission exchange the WCPX-TV DTV Channel 58 assignment with the DTV channel assignment of either unbuilt station WZWY(TV) (DTV Channel 14) or unbuilt station WLCB-TV (DTV Channel 46), both of which are in the Orlando market.

Reece is the permittee of unbuilt television Station WZWY, Orlando. WZWY(TV) is assigned NTSC Channel 27, and was assigned DTV Channel 14 in the Sixth Report and Order. Reece is the only party that responded directly to WCPX's Petition, and its opposition is limited to WCPX's conditional request that the Commission substitute DTV Channel 14 for WCPX-TV and assign DTV Channel 58 to WZWY(TV). Reece did not object to WCPX's request that the Commission retain the low band VHF channels in the core DTV spectrum and that the Commission allow WCPX-TV to provide DTV service on Channel 6 at the end of the transition period as long as it is consistent with the Commission's interference standards and would cause no harm to other Orlando DTV licensees. Nor did Reece oppose WCPX's alternate request that the Commission substitute DTV Channel 46 for WCPX-TV, and assign DTV Channel 58 to WLCB-TV, another unbuilt station in the Orlando market.<sup>1</sup>

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<sup>1</sup> The permittee of WLCB-TV did not oppose WCPX's Petition.

Although NPR did not oppose directly WCPX's Petition, it filed two oppositions to various petitions for reconsideration wherein NPR opposed, in general, the use of Channel 6 for DTV purposes.<sup>2</sup>

## **II. DISCUSSION OF NPR OPPOSITION**

NPR opposes several petitioners who support the use of Channel 6 for DTV allocations.<sup>3</sup> NPR focuses on the historical issue involving adjacent channel interference between television stations operating on NTSC Channel 6 and noncommercial educational FM ("NCE-FM") stations. NPR also raised this issue in its Petition for Reconsideration filed June 13, 1997. On July 18, 1997, WCPX filed its "Opposition to Petition for Reconsideration of National Public Radio," which is incorporated herein by reference.<sup>4</sup> WCPX also supports the concurrently filed "Reply of 'Certain Channel 2-6 Licensees' to Opposition of National Public Radio."

WCPX is certainly aware of the interference issues involving Channel 6 and NCE-FM operations. WCPX has for years worked with NCE-FM stations in the Orlando market to reduce and eliminate such interference, including having two NCE-FM stations co-locate on the WCPX-TV tower, and having one of those stations use a combined signal from the WCPX-TV antenna.

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<sup>2</sup> See "Opposition of National Public Radio, Inc. to Petition for Reconsideration of 'Certain Channel 2-6 Licensees'" filed June 9, 1997, and "Opposition of National Public Radio, Inc. to Petitions for Reconsideration of the Fifth and Sixth Reports and Orders" filed July 18, 1997.

<sup>3</sup> NPR has specifically opposed petitions filed by Certain Channel 2-6 Licensees; the Association for Maximum Service Television, Inc., The Broadcasters Caucus and Other Broadcasters; and Gannett Co., Inc.

<sup>4</sup> NPR also sought reconsideration of the Commission's use of Channel 6 for new DTV allotments. WCPX takes no position on this aspect of NPR's Petition.

These efforts have resulted in no incidents of reported Channel 6/NCE-FM interference in the Orlando market of which WCPX is aware.

NPR's opposition to the use of NTSC Channel 6 allotments for DTV at the end of the transition period ignores the proven ability of television and NCE-FM stations to work together to minimize and eliminate the potential for interference. NPR also ignores the fact that the problem, when it exists, is sporadic, consists of interference to the reception of Channel 6, and in most cases is easily rectified. NPR's opposition to using Channel 6 for any DTV operation is not predicated on engineering evidence, but rather on speculation as to possible problems that might arise. Thus far, however, the only practical tests of the DTV transmission system conducted in Charlotte indicate that reception of DTV Channel 6 is generally better than NTSC reception. See WCPX Opposition to NPR Petition at 7-8, and Attachment 1 at 5.

If anything, the Charlotte tests provided a glimpse of a potential worst-case scenario. The Charlotte market lacks an NTSC Channel 6 operation and therefore has several NCE-FM stations operating at considerably higher power and antenna heights than would exist in a market with an existing NTSC Channel 6 station. Additionally, no coordination effort was undertaken to avoid potential Channel 6/NCE-FM interference. Notwithstanding these conditions, and the relatively low power of the DTV test transmissions, there were only isolated incidents of interference due to the NCE-FM stations in the area, and less interference than what might have been expected. See Ibid. Thus, despite NPR's asserted reasons why a DTV operation on an NTSC Channel 6 allotment might create the potential for additional interference,<sup>5</sup> the tests conducted thus far

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<sup>5</sup> See NPR's June 9 Opposition at 3; and July 18 Opposition at 3.

suggest that quite the opposite is true and that DTV operations on an NTSC Channel 6 allotment will likely result in less potential for interference.<sup>6</sup>

As numerous petitioners and commenters in this proceeding demonstrated, there are significant benefits from operating DTV on the low VHF channels, including reduced power requirements and better propagation characteristics. At the same time there is no evidence that permitting DTV operations on NTSC Channel 6 allotments will impact adversely NCE-FM stations. The Commission cannot rely on NPR's speculation in making its determination whether to allow stations such as WCPX-TV to switch their DTV operation back to their NTSC Channel 6 allotment. Based on the overwhelming comments the Commission received and the available technical evidence, the Commission should include the low VHF channels in the core DTV spectrum and allow stations providing NTSC service on Channel 6 to provide DTV service on Channel 6 at the end of the transition period.

### III. DISCUSSION OF REECE OPPOSITION

As noted above, Reece opposes WCPX's Petition in only one limited respect, i.e., WCPX's contingent proposal to exchange DTV channel assignments between WCPX-TV and unbuilt station WZWY(TV). Reece does not object to the proposed exchange of DTV channel assignments on technical grounds. It does not assert that the assignment of DTV Channel 58 to WZWY(TV) in exchange for DTV Channel 14, and the assignment of DTV Channel 14 to WCPX-TV, is inconsistent with the distance separation and interference standards adopted in the

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<sup>6</sup> This does not consider that improved DTV receiver designs should also reduce the potential for interference, particularly if the Commission addresses this issue and establishes receiver selectivity standards that would further reduce the potential for Channel 6/NCE-FM interference. See WCPX Opposition at 6, footnote 9.

Sixth Report and Order.<sup>7</sup> In the absence of showing any technical reason why WCPX's proposed channel substitution is not feasible, Reece asserts that WCPX has not demonstrated sufficiently why the Commission should make the channel substitution.<sup>8</sup> However, Reece's assertions miss the mark.

Contrary to Reece's assertion, nowhere in the Sixth Report and Order did the Commission provide any explanation why it allotted DTV Channel 58 to WCPX-TV and DTV Channel 14 to WZKY(TV). As Reece acknowledges, the absence of an explanation for the Commission's action renders it arbitrary and capricious.<sup>9</sup> Although the Commission in the Sixth Report and Order set forth the various considerations generally applicable to its allotment methodology, nowhere did the Commission explain how, when faced with the same channels available for allotment to stations in the same market, it determined to assign a particular channel to each

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<sup>7</sup> The extent of Reece's "technical" objection to the proposed channel exchange is the claim that WCPX did not submit a reliable analysis regarding the impact of the exchange on WZKY. Reece Opposition at 6. As WCPX stated in its Petition, it was not possible to undertake a complete analysis of the alternate channel exchanges proposed in WCPX's Petition because the Commission had not yet released OET Bulletin No. 69. However, the OET Bulletin is now available and consistent with the Order, DA 97-1377, released July 2, 1997 (Office of Engineering and Technology), WCPX intends to file by August 22, 1997, a supplement to its Petition concerning the proposed modification of the DTV allotments in the Orlando market.

<sup>8</sup> Although not set forth in the body of Reece's Opposition, the engineering statement appended to the Opposition asserts "that the NAB/Broadcast Caucus has determined" that there are other possible alternate DTV channels that might be available for WCPX-TV. Reece Opposition at Engineering Statement, page 2. WCPX knows of no such study following the adoption of the Table in the Sixth Report and Order, and has contacted counsel for the Broadcast Caucus who has stated she has no knowledge of such a study. In the absence of any engineering or other technical support for the assertion, the Commission cannot give credence to Reece's engineering statement.

<sup>9</sup> See Reece Opposition at 3, quoting Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Insurance, 463 U.S. 29, 43 (1983) ("an agency must 'examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made'").

station. Indeed, it is WCPX's understanding that due to the numerous variables and the complexity of the computational tasks required in developing the DTV Table of Allotments, if the Commission ran its computer program a second time using the exact same allotment criteria and parameters used in developing the DTV Table of Allotments contained in Appendix B to the Sixth Report and Order, the results would be different.

In the case of the Orlando market, and WCPX-TV, WZWY(TV), and WLCB-TV in particular, the Commission apparently had at least three available DTV channels: 14, 46, and 58.<sup>10</sup> Nowhere did the Commission explain why it assigned DTV Channel 58, which is outside the core DTV spectrum, to WCPX-TV, while assigning two DTV channels within the core spectrum to two unbuilt construction permits. If, as the Commission described, one of the allotment planning factors was to assign DTV channels within the core spectrum (i.e., Channels 2-51), see Sixth Report and Order at para. 76, then in circumstances where the channels available for DTV allotments in a given market included core and non-core channels, the Commission needed some mechanism for determining which stations would receive core DTV channels assignments, and which stations would receive non-core assignments. How the Commission made this determination is not explained in the Sixth Report and Order. However, in the related circumstance of determining how to assign the limited number of available DTV channels in Puerto Rico, the Commission gave priority to operating stations over unbuilt construction permits. Sixth Report and Order, at footnote 367.

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<sup>10</sup> This is based on the ability to exchange these DTV channels among the three stations demonstrated in WCPX's Petition.

In the Orlando market, the Commission apparently had a limited number of available DTV channels to assign to eligible stations. Because WCPX-TV is an operating station, while the other two are unbuilt construction permits, the Commission should have given a similar preference to WCPX-TV over the unbuilt construction permits as it did in Puerto Rico, and assigned WCPX-TV a DTV channel within the core spectrum. This approach is particularly appropriate in the case of WCPX-TV, which operates on NTSC Channel 6 -- a channel that the Commission has thus far refused to confirm will be part of the core spectrum -- while both unbuilt permits have NTSC and DTV channel assignments that are within the core.<sup>11</sup> Assigning a DTV core channel to WCPX-TV would have given each of the three stations at least one channel (either its NTSC or DTV channel) within the DTV core spectrum, and thereby minimized future service disruptions at the end of the transition period.<sup>12</sup>

Another relevant factor in the Orlando market is the expedited DTV build-out requirement that applies to the network-affiliated stations. The Commission has imposed special burdens on network affiliates in the top 30 markets to deploy DTV facilities rapidly. See 47 C.F.R. Section 73.624(d). This means that WCPX-TV, as a CBS affiliate, must complete construction of its

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<sup>11</sup> WZWY(TV) is assigned NTSC Channel 27, and WLCB-TV is assigned NTSC Channel 45.

<sup>12</sup> All stations must simulcast 100% of their programming on both their analog and DTV channels as the transition period ends. See 47 C.F.R. Section 73.624(f)(iii). Requiring a station to switch its programming at the end of the transition period to a different channel that is not used for either its NTSC or DTV operation (as will occur to WCPX-TV if it is not permitted to switch back to its NTSC Channel 6), will cause a significant additional burden on that station and disrupt its viewers, who are unaccustomed to receiving that station's program service on the new channel. Stations that have at least one channel within the core spectrum will suffer no adverse impact because the location of their programming and operation will not change at the end of the transition period.



DTV facility no later than November 1, 1999, while WZWY(TV) and WLCB-TV, as unbuilt UHF stations, will not have to construct their DTV facilities until May 1, 2002 (assuming they first construct their NTSC facilities and remain an authorized licensee or permittee). Thus, the Commission is requiring WCPX to complete construction of its DTV facility on an expedited basis when new equipment and construction costs will be at their highest. See Fifth Report and Order at para 78. While WCPX does not object to the expedited build-out requirement, and recognizes the public interest benefits that will result,<sup>13</sup> there is no public interest served in further exacerbating the burdens that the expedited build-out imposes by requiring the build-out to occur on a high UHF channel that is outside the core spectrum when there is an available DTV channel within the core that satisfies the Commission's technical requirements and will avoid a forced relocation to an unknown channel at the end of the transition.<sup>14</sup>

WCPX is not seeking to deprive Reece of a DTV channel, nor does WCPX question Reece's eligibility to receive a DTV allotment. Compare Reece Opposition at 4. The issue is whether the Commission in the Sixth Report and Order made a fair, efficient, and equitable distribution of DTV channels as required under Section 307(b) of the Communications Act, 47 U.S.C. Section 307(b). The Commission did not explain why it made the specific channel allotments to WCPX-TV, WZWY(TV), and WLCB-TV. Elsewhere in the Sixth Report and

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<sup>13</sup> See Fifth Report and Order at paras. 78, 80-83.

<sup>14</sup> Such uncertainties in WCPX-TV's final DTV operating channel after the transition period will also make it impossible for WCPX to take its final DTV channel into account when planning its initial DTV facility on Channel 58 and acquiring equipment to implement the expedited DTV build-out. Depending on WCPX-TV's final DTV channel, WCPX may need to make additional equipment acquisitions or modifications to implement the final transition, adding to the costs it must incur.

Order the Commission recognized that in certain circumstances an operating station should receive an allotment preference over an unbuilt construction permit. For WCPX, the narrow issue is the Commission's unreasoned determination to allot a DTV channel that is outside the core spectrum to WCPX-TV -- an operating network affiliate that is subject to a rapid build-out requirement and whose NTSC channel is also potentially outside the core DTV spectrum, while it allotted DTV channels in the core spectrum to two unbuilt construction permits for which there is no immediate prospect of construction of either their NTSC or DTV facilities.<sup>15</sup> The Commission has not provided a reasoned explanation how or why it made the specific allocation determinations as among WCPX-TV, WZWY(TV), and WLCB-TV, or why it is unduly burdening WCPX in the conversion to DTV. As such, the Commission's action is arbitrary and capricious, and the Commission should reconsider the Orlando market DTV allotments as proposed in WCPX's Petition.<sup>16</sup>

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<sup>15</sup> Reece points out that on June 10, 1997, it filed an amendment to a pending modification application for WZWY(TV) (BMPCT-951025KD) that proposes a new transmitter site (Reece has previously proposed several transmitter sites for WZWY(TV) in addition to the site authorized in its permit that have proved unsuitable due either to zoning or FAA concerns). The site proposed is more than 70 kilometers distant from the site authorized in the WZWY(TV) permit (which is also the reference coordinates for WZWY(TV)'s DTV channel assignment). The Commission has stated that it will consider the impact on DTV allotments in considering whether to grant any future modifications of NTSC authorizations. See Sixth Report and Order at para. 113. This policy is applicable to Reece's pending application.

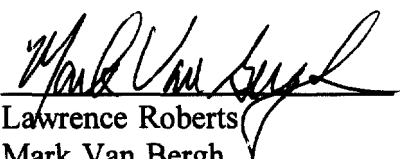
<sup>16</sup> WCPX reemphasizes that if the Commission determines to permit WCPX-TV to switch its DTV operation back to its NTSC Channel 6 assignment at the end of the transition period, then WCPX does not object to operating on DTV Channel 58 during the transition period and its proposed exchange of DTV allotments in the Orlando market is unnecessary.

WHEREFORE, for the foregoing reasons, WCPX respectfully requests the Commission to grant WCPX's Petition for Partial Reconsideration and deny the Oppositions of Reece and NPR as set forth above.

Respectfully submitted,

WCPX LICENSE PARTNERSHIP

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July 31, 1997

## CERTIFICATE OF SERVICE

I, Mark Van Bergh, hereby certify that I have, this 31st day of July, 1997, caused to be served by first class mail except as otherwise noted, a true copy of the foregoing "Opposition to Petition for Reconsideration of National Public Radio" to the following:

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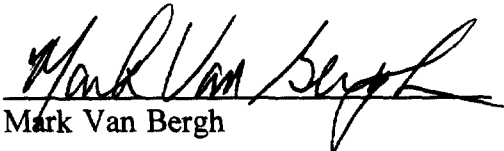
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